

AMENDED IN SENATE JUNE 24, 1996

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2104**

**Introduced by Assembly Member Machado**

January 25, 1996

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An act to amend ~~Section~~ *Sections 1370, 1370.1, and 11105 of the Penal Code, and to amend Sections 6509 and 7325 of the Welfare and Institutions Code, relating to escapees mentally disordered persons.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2104, as amended, Machado. ~~Escaped persons: harm to children~~ *Mentally disordered persons: commitment to facilities: sex offenders.*

(1) *Under existing law, if a defendant is found mentally incompetent because of a mental disorder, the criminal trial or judgment shall be suspended until the person becomes mentally competent. The court is required, in the meantime, to order that the defendant be delivered to a state hospital for the care and treatment of the mentally disordered, or to any other available public or private treatment facility approved by the community program director, or be placed on outpatient status.*

*Existing law also provides that if the defendant is found mentally incompetent and is developmentally disabled, the criminal trial or judgment shall be suspended until the defendant becomes mentally competent. The court is required, in the meantime, to order that the defendant be*

*delivered to a state hospital for the care and treatment of the developmentally disabled, or to any other available residential facility, as specified, or be placed on outpatient status.*

*This bill would require the prosecutor in a proceeding to determine mental competence, if the action is on a complaint charging a specified felony sex offense, to determine (a) whether the defendant previously has been found mentally incompetent to stand trial on a complaint charging any specified felony sex offense, or (b) whether the defendant is currently the subject of a pending proceeding to determine whether the defendant is mentally competent to stand trial on a charge of any specified felony sex offense. If either determination is made, the bill would require the prosecutor to so notify the court and defendant. After notification and opportunity for hearing, the bill would require the court to order that the defendant be delivered to a state hospital or other secure treatment facility for the care and treatment of the mentally disordered or the developmentally disabled unless the court makes specific findings on the record why this placement is inappropriate.*

*The bill also would require the court, if the action is on a complaint charging a specified felony sex offense, and the defendant has been denied bail based on the court finding a substantial likelihood that the person's release would result in great bodily harm to others, to order that the defendant be delivered to a state hospital for the care and treatment of the mentally disordered or developmentally disabled unless the court makes specific findings on the record why this placement is inappropriate.*

*This bill also would require the clerk of the court to notify the Department of Justice in writing of any finding of mental incompetence with respect to a defendant adjudicated pursuant to the above provisions for inclusion in his or her state summary criminal history information.*

*(2) Existing law requires the court to provide copies of specified documents to be taken with the defendant to the state hospital or other treatment facility where the defendant is to be confined, including, among other things, his or her*



*state summary criminal history information and any arrest reports.*

*This bill additionally would require the court to provide records of any finding of mental incompetence arising out of a complaint charging any specified felony sex offense or of any pending proceeding to determine whether the defendant is mentally competent to stand trial on a complaint charging any specified felony sex offense. The bill also would require the court, when the defendant is committed to a facility other than the state hospital or other secure treatment facility, to order that notice be given to the appropriate law enforcement agency or agencies having local jurisdiction at the site of the placement facility of any finding of mental incompetence arising out of a complaint charging any specified felony sex offense. The bill would impose additional notification requirements on any facility that transfers a defendant initially committed to a state hospital or other secure treatment facility pursuant to the provisions in (1) above to any other facility.*

*(3) Existing law requires the Department of Justice to maintain state summary criminal history information.*

*This bill would require the state summary criminal history information to include any finding of mental incompetence to stand trial arising out of a complaint charging any specified felony sex offense.*

*(4) Under existing law, if a mentally retarded person is found to be a danger to himself or herself, which includes a finding of mental incompetence to stand trial, the court is authorized to order the person committed to the State Department of Developmental Services for suitable treatment and rehabilitation services, including placement in any state hospital, any licensed community care facility, or any health facility.*

*This bill would require the court to order the State Department of Developmental Services to give notice of any finding of mental incompetence arising out of a complaint charging any specified felony sex offense to the designated placement facility and the appropriate law enforcement agency or agencies having local jurisdiction at the site of the placement facility.*

(5) Existing law provides that any officer or employee of a state developmental center, a state hospital under the jurisdiction of the State Department of Mental Health, a facility operated by or under the federal Veterans' Administration, or a mental health facility designated by a county, shall provide to any peace officer notification, in writing, concerning any patient who escapes from the hospital or facility, in order to assist with the apprehension and return of the patient. One of the elements required to be included in this notification is information about the patient's degree of dangerousness.

This bill would require that information about the degree of dangerousness include specific information about the patient if he or she is deemed likely to cause harm to himself or herself or to others.

This bill would also provide that, if the escapee has been charged with any crime involving physical harm to children, the notice shall be provided *by the law enforcement agency* to school districts in the vicinity of the hospital or other facility in which the escapee is being held, in the area the escapee is known or is likely to frequent, and in the area where the escapee resided immediately prior to his or her confinement.

*The bill would provide that no entity or employee would be liable for damages caused, or alleged to be caused, by the release, or the failure to release, of information pursuant to these provisions.*

(6) *The bill would impose a state-mandated local program by imposing new duties on prosecutors and court personnel.*

(7) *The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.*

*This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.*



Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: ~~no~~ yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. *Section 1370 of the Penal Code is*  
2 *amended to read:*

3 1370. (a) (1) (A) If the defendant is found mentally  
4 competent, the criminal process shall resume, the trial on  
5 the offense charged shall proceed, and judgment may be  
6 pronounced.

7 (B) If the defendant is found mentally incompetent,  
8 the trial or judgment shall be suspended until the person  
9 becomes mentally competent, ~~and the court shall order~~  
10 ~~that (i) in.~~

11 (i) *In the meantime, the court shall order that the*  
12 *defendant be delivered by the sheriff to a state hospital*  
13 *for the care and treatment of the mentally disordered, or*  
14 *to any other available public or private treatment facility*  
15 *approved by the community program director that will*  
16 *promote the defendant's speedy restoration to mental*  
17 *competence, or placed on outpatient status as specified in*  
18 *Section 1600, and (ii) upon.*

19 (ii) *However, if the action is on a complaint charging*  
20 *a felony offense specified in Section 290, the prosecutor*  
21 *shall determine whether the defendant previously has*  
22 *been found mentally incompetent to stand trial pursuant*  
23 *to this chapter on a charge of a Section 290 offense, or*  
24 *whether the defendant is currently the subject of a*  
25 *pending Section 1368 proceeding arising out of a charge*  
26 *of a Section 290 offense. If either determination is made,*  
27 *the prosecutor shall so notify the court and defendant in*  
28 *writing. After this notification, and opportunity for*  
29 *hearing, the court shall order that the defendant be*  
30 *delivered by the sheriff to a state hospital or other secure*  
31 *treatment facility for the care and treatment of the*  
32 *mentally disordered unless the court makes specific*  
33 *findings on the record why this placement is*  
34 *inappropriate.*

1 (iii) *If the action is on a complaint charging a felony*  
2 *offense specified in Section 290 and the defendant has*  
3 *been denied bail pursuant to subdivision (b) of Section 12*  
4 *of Article I of the California Constitution because the*  
5 *court has found, based upon clear and convincing*  
6 *evidence, a substantial likelihood that the person's release*  
7 *would result in great bodily harm to others, the court shall*  
8 *order that the defendant be delivered by the sheriff to a*  
9 *state hospital for the care and treatment of the mentally*  
10 *disordered unless the court makes specific findings on the*  
11 *record why this placement is inappropriate.*

12 (iv) *The clerk of the court shall notify the Department*  
13 *of Justice in writing of any finding of mental*  
14 *incompetence with respect to a defendant who is subject*  
15 *to clause (ii) or (iii) for inclusion in his or her state*  
16 *summary criminal history information.*

17 (C) *Upon the filing of a certificate of restoration to*  
18 *competence, the court shall order that the defendant be*  
19 *returned to court in accordance with Section 1372. The*  
20 *court shall transmit a copy of its order to the community*  
21 *program director or a designee.*

22 (2) *Prior to making the order directing that the*  
23 *defendant be confined in a state hospital or other*  
24 *treatment facility or placed on outpatient status, the*  
25 *court shall order the community program director or a*  
26 *designee to evaluate the defendant and to submit to the*  
27 *court within 15 judicial days of the order a written*  
28 *recommendation as to whether the defendant should be*  
29 *required to undergo outpatient treatment, or committed*  
30 *to a state hospital or to any other treatment facility. No*  
31 *person shall be admitted to a state hospital or other*  
32 *treatment facility or placed on outpatient status under*  
33 *this section without having been evaluated by the*  
34 *community program director or a designee. This*  
35 *paragraph shall not apply to any person required to be*  
36 *placed in a state hospital or other secure treatment*  
37 *facility pursuant to clause (ii) or (iii) of subparagraph (B)*  
38 *of paragraph (1).*

39 (3) ~~*When the court, after considering the placement*~~  
40 ~~*recommendation of the community program director*~~

1 ~~that is required in paragraph (2),~~ orders that the  
2 defendant be confined in a state hospital or other public  
3 or private treatment facility, the court shall provide  
4 copies of the following documents which shall be taken  
5 with the defendant to the state hospital or other  
6 treatment facility where the defendant is to be confined:

7 (A) The commitment order, including a specification  
8 of the charges.

9 (B) A computation or statement setting forth the  
10 maximum term of commitment in accordance with  
11 subdivision (c).

12 (C) A computation or statement setting forth the  
13 amount of credit for time served, if any, to be deducted  
14 from the maximum term of commitment.

15 (D) State ~~Summary Criminal History~~ *summary*  
16 *criminal history* information.

17 (E) Any arrest reports prepared by the police  
18 department or other law enforcement agency.

19 (F) Any court-ordered psychiatric examination or  
20 evaluation reports.

21 (G) The community program director's placement  
22 recommendation report.

23 *(H) Records of any finding of mental incompetence*  
24 *pursuant to this chapter arising out of a complaint*  
25 *charging a felony offense specified in Section 290 or any*  
26 *pending Section 1368 proceeding arising out of a charge*  
27 *of a Section 290 offense.*

28 *(4) When the defendant is committed to a treatment*  
29 *facility pursuant to clause (i) of subparagraph (B) of*  
30 *paragraph (1) or the court makes the findings specified*  
31 *in clause (ii) or (iii) of subparagraph (B) of paragraph*  
32 *(1) to assign the defendant to a treatment facility other*  
33 *than a state hospital or other secure treatment facility, the*  
34 *court shall order that notice be given to the appropriate*  
35 *law enforcement agency or agencies having local*  
36 *jurisdiction at the site of the placement facility of any*  
37 *finding of mental incompetence pursuant to this chapter*  
38 *arising out of a charge of a Section 290 offense.*

39 (5) When directing that the defendant be confined in  
40 a state hospital pursuant to this subdivision, the court shall

1 select the hospital in accordance with the policies  
2 established by the State Department of Mental Health.

3 ~~(5)~~

4 (6) (A) If the defendant is committed or transferred  
5 to a state hospital pursuant to this section, the court may,  
6 upon receiving the written recommendation of the  
7 medical director of the state hospital and the community  
8 program director that the defendant be transferred to a  
9 public or private treatment facility approved by the  
10 community program director, order the defendant  
11 transferred to that facility. If the defendant is committed  
12 or transferred to a public or private treatment facility  
13 approved by the community program director, the court  
14 may, upon receiving the written recommendation of the  
15 community program director, transfer the defendant to  
16 a state hospital or to another public or private treatment  
17 facility approved by the community program director. In  
18 the event of dismissal of the criminal charges before the  
19 defendant recovers competence, the person shall be  
20 subject to the applicable provisions of the  
21 Lanterman-Petris-Short Act (Part 1 (commencing with  
22 Section 5000) of Division 5 of the Welfare and Institutions  
23 Code). Where either the defendant or the prosecutor  
24 chooses to contest either kind of order of transfer, a  
25 petition may be filed in the court for a hearing, which  
26 shall be held if the court determines that sufficient  
27 grounds exist. At the hearing, the prosecuting attorney or  
28 the defendant may present evidence bearing on the  
29 order of transfer. The court shall use the same standards  
30 as are used in conducting probation revocation hearings  
31 pursuant to Section 1203.2.

32 Prior to making an order for transfer under this section,  
33 the court shall notify the defendant, the attorney of  
34 record for the defendant, the prosecuting attorney, and  
35 the community program director or a designee.

36 (B) *If the defendant is initially committed to a state*  
37 *hospital or secure treatment facility pursuant to clause*  
38 *(ii) or (iii) of subparagraph (B) of paragraph (1) and is*  
39 *subsequently transferred to any other facility, copies of*  
40 *the documents specified in paragraph (3) shall be taken*



1 *with the defendant to each subsequent facility to which*  
2 *the defendant is transferred. The transferring facility*  
3 *shall also notify the appropriate law enforcement agency*  
4 *or agencies having local jurisdiction at the site of the new*  
5 *facility that the defendant is a person subject to clause (ii)*  
6 *or (iii) of subparagraph (B) of paragraph (1).*

7 (b) (1) Within 90 days of a commitment made  
8 pursuant to subdivision (a), the medical director of the  
9 state hospital or other treatment facility to which the  
10 defendant is confined shall make a written report to the  
11 court and the community program director for the  
12 county or region of commitment, or a designee,  
13 concerning the defendant's progress toward recovery of  
14 mental competence. Where the defendant is on  
15 outpatient status, the outpatient treatment staff shall  
16 make a written report to the community program  
17 director concerning the defendant's progress toward  
18 recovery of mental competence. Within 90 days of  
19 placement on outpatient status, the community program  
20 director shall report to the court on this matter. If the  
21 defendant has not recovered mental competence, but the  
22 report discloses a substantial likelihood that the  
23 defendant will regain mental competence in the  
24 foreseeable future, the defendant shall remain in the state  
25 hospital or other treatment facility or on outpatient  
26 status. Thereafter, at six-month intervals or until the  
27 defendant becomes mentally competent, where the  
28 defendant is confined in a treatment facility, the medical  
29 director of the hospital or person in charge of the facility  
30 shall report in writing to the court and the community  
31 program director or a designee regarding the defendant's  
32 progress toward recovery of mental competence. Where  
33 the defendant is on outpatient status, after the initial  
34 90-day report, the outpatient treatment staff shall report  
35 to the community program director on the defendant's  
36 progress toward recovery, and the community program  
37 director shall report to the court on this matter at  
38 six-month intervals. A copy of these reports shall be  
39 provided to the prosecutor and defense counsel by the  
40 court. If the report indicates that there is no substantial

1 likelihood that the defendant will regain mental  
2 competence in the foreseeable future, the committing  
3 court shall order the defendant to be returned to the  
4 court for proceedings pursuant to paragraph (2) of  
5 subdivision (c). The court shall transmit a copy of its  
6 order to the community program director or a designee.

7 (2) Any defendant who has been committed or has  
8 been on outpatient status for 18 months and is still  
9 hospitalized or on outpatient status shall be returned to  
10 the committing court where a hearing shall be held  
11 pursuant to the procedures set forth in Section 1369. The  
12 court shall transmit a copy of its order to the community  
13 program director or a designee.

14 (3) If it is determined by the court that no treatment  
15 for the defendant's mental impairment is being  
16 conducted, the defendant shall be returned to the  
17 committing court. The court shall transmit a copy of its  
18 order to the community program director or a designee.

19 (c) (1) If, at the end of three years from the date of  
20 commitment or a period of commitment equal to the  
21 maximum term of imprisonment provided by law for the  
22 most serious offense charged in the information,  
23 indictment, or misdemeanor complaint, whichever is  
24 shorter, the defendant has not recovered mental  
25 competence, the defendant shall be returned to the  
26 committing court. The court shall notify the community  
27 program director or a designee of the return and of any  
28 resulting court orders.

29 (2) Whenever any defendant is returned to the court  
30 pursuant to paragraph (1) or (2) of subdivision (b) or  
31 paragraph (1) of this subdivision and it appears to the  
32 court that the defendant is gravely disabled, as defined in  
33 paragraph (2) of subdivision (h) of Section 5008 of the  
34 Welfare and Institutions Code, the court shall order the  
35 conservatorship investigator of the county of  
36 commitment of the defendant to initiate conservatorship  
37 proceedings for the defendant pursuant to Chapter 3  
38 (commencing with Section 5350) of Part 1 of Division 5  
39 of the Welfare and Institutions Code. Any hearings  
40 required in the conservatorship proceedings shall be held



1 in the superior court in the county that ordered the  
2 commitment. The court shall transmit a copy of the order  
3 directing initiation of conservatorship proceedings to the  
4 community program director or a designee and shall  
5 notify the community program director or a designee of  
6 the outcome of the proceedings.

7 (3) Where the defendant is confined in a treatment  
8 facility, a copy of any report to the committing court  
9 regarding the defendant's progress toward recovery of  
10 mental competence shall be provided by the committing  
11 court to the prosecutor and to the defense counsel.

12 (d) The criminal action remains subject to dismissal  
13 pursuant to Section 1385. If the criminal action is  
14 dismissed, the court shall transmit a copy of the order of  
15 dismissal to the community program director or a  
16 designee.

17 (e) If the criminal charge against the defendant is  
18 dismissed, the defendant shall be released from any  
19 commitment ordered under this section, but without  
20 prejudice to the initiation of any proceedings that may be  
21 appropriate under the Lanterman-Petris-Short Act, Part  
22 1 (commencing with Section 5000) of Division 5 of the  
23 Welfare and Institutions Code.

24 (f) As used in this chapter, "community program  
25 director" means the person, agency, or entity designated  
26 by the State Department of Mental Health pursuant to  
27 Section 1605 of this code and Section 4360 of the Welfare  
28 and Institutions Code.

29 *SEC. 2. Section 1370.1 of the Penal Code is amended*  
30 *to read:*

31 1370.1. (a) (1) (A) If the defendant is found  
32 mentally competent, the criminal process shall resume,  
33 the trial on the offense charged shall proceed, and  
34 judgment may be pronounced.

35 (B) If the defendant is found mentally incompetent  
36 and is developmentally disabled, the trial or judgment  
37 shall be suspended until the defendant becomes mentally  
38 competent, ~~and~~.

39 (i) *Except as provided in clause (ii) or (iii), the court*  
40 *shall consider a recommendation for placement, which*

1 recommendation shall be made to the court by the  
2 director of a regional center or designee, ~~and that (A) in.~~  
3 *In* the meantime, the defendant *shall* be delivered by the  
4 sheriff or other person designated by the court to a state  
5 hospital for the care and treatment of the  
6 developmentally disabled or any other available  
7 residential facility approved by the director of a regional  
8 center for the developmentally disabled established  
9 under Division 4.5 (commencing with Section 4500) of  
10 the Welfare and Institutions Code as will promote the  
11 defendant's speedy attainment of mental competence, or  
12 be placed on outpatient status pursuant to the provisions  
13 of Section 1370.4 and Title 15 (commencing with Section  
14 1600) of Part 2, ~~and (B).~~

15 *(ii) However, if the action is on a complaint charging*  
16 *a felony offense specified in Section 290, the prosecutor*  
17 *shall determine whether the defendant previously has*  
18 *been found mentally incompetent to stand trial pursuant*  
19 *to this chapter on a charge of a Section 290 offense, or*  
20 *whether the defendant is currently the subject of a*  
21 *pending Section 1368 proceeding arising out of a charge*  
22 *of a Section 290 offense. If determination is made, the*  
23 *prosecutor shall so notify the court and defendant in*  
24 *writing. After this notification, and opportunity for*  
25 *hearing, the court shall order that the defendant be*  
26 *delivered by the sheriff to a state hospital or other secure*  
27 *treatment facility for the care and treatment of the*  
28 *developmentally disabled unless the court makes specific*  
29 *findings on the record why this placement is*  
30 *inappropriate.*

31 *(iii) If the action is on a complaint charging a felony*  
32 *offense specified in Section 290 and the defendant has*  
33 *been denied bail pursuant to subdivision (b) of Section 12*  
34 *of Article I of the California Constitution because the*  
35 *court has found, based upon clear and convincing*  
36 *evidence, a substantial likelihood that the person's release*  
37 *would result in great bodily harm to others, the court shall*  
38 *order that the defendant be delivered by the sheriff to a*  
39 *state hospital for the care and treatment of the*  
40 *developmentally disabled unless the court makes specific*

1 *findings on the record why this placement is*  
2 *inappropriate.*

3 *(iv) The clerk of the court shall notify the Department*  
4 *of Justice in writing of any finding of mental*  
5 *incompetence with respect to a defendant who is subject*  
6 *to clause (ii) or (iii) for inclusion in his or her state*  
7 *summary criminal history information.*

8 *(C) Upon becoming competent, the court shall*  
9 *order that the defendant be returned to the committing*  
10 *court pursuant to the procedures set forth in paragraph*  
11 *(2) of subdivision (a) of Section 1372 or by another person*  
12 *designated by the court.*

13 *(D) The court shall transmit a copy of its order to the*  
14 *regional center director or designee and to the Director*  
15 *of Developmental Services.*

16 *(E) As used in this section, "developmental disability"*  
17 *means a disability which originates before an individual*  
18 *attains age 18, continues, or can be expected to continue,*  
19 *indefinitely and constitutes a substantial handicap for*  
20 *such individual, and shall not include other handicapping*  
21 *conditions that are solely physical in nature. As defined by*  
22 *the Director of Developmental Services, in consultation*  
23 *with the Superintendent of Public Instruction, this term*  
24 *shall include mental retardation, cerebral palsy, epilepsy,*  
25 *and autism. This term shall also include handicapping*  
26 *conditions found to be closely related to mental*  
27 *retardation or to require treatment similar to that*  
28 *required for mentally retarded individuals, but shall not*  
29 *include other handicapping conditions that are solely*  
30 *physical in nature.*

31 *(2) Prior to making ~~such~~ the order directing the*  
32 *defendant be confined in a state hospital or other*  
33 *residential facility or be placed on outpatient status, the*  
34 *court shall order the regional center director or designee*  
35 *to evaluate the defendant and to submit to the court*  
36 *within 15 judicial days of such order a written*  
37 *recommendation as to whether the defendant should be*  
38 *committed to a state hospital or to any other available*  
39 *residential facility approved by the regional center*  
40 *director. No person shall be admitted to a state hospital*

1 or other residential facility or accepted for outpatient  
2 status under Section 1370.4 without having been  
3 evaluated by the regional center director or designee.  
4 *This paragraph shall not apply to any person required to*  
5 *be placed in a state hospital or other secure treatment*  
6 *facility pursuant to clause (ii) or (iii) of subparagraph (B)*  
7 *of paragraph (1).*

8 (3) *When the court orders that the defendant be*  
9 *confined in a state hospital or other secure treatment*  
10 *facility pursuant to clause (ii) or (iii) of subparagraph (B)*  
11 *of paragraph (1), the court shall provide copies of the*  
12 *following documents which shall be taken with the*  
13 *defendant to the state hospital or other secure treatment*  
14 *facility where the defendant is to be confined:*

15 (A) *State summary criminal history information.*

16 (B) *Any arrest reports prepared by the police*  
17 *department or other law enforcement agency.*

18 (C) *Records of any finding of mental incompetence*  
19 *pursuant to this chapter arising out of a complaint*  
20 *charging a felony offense specified in Section 290 or any*  
21 *pending Section 1368 proceeding arising out of a charge*  
22 *of a Section 290 offense.*

23 (4) *When the defendant is committed to a residential*  
24 *facility pursuant to clause (i) of subparagraph (B) of*  
25 *paragraph (1) or the court makes the findings specified*  
26 *in clause (ii) or (iii) of subparagraph (B) of paragraph*  
27 *(1) to assign the defendant to a facility other than a state*  
28 *hospital or other secure treatment facility, the court shall*  
29 *order that notice be given to the appropriate law*  
30 *enforcement agency or agencies having local jurisdiction*  
31 *at the site of the placement facility of any finding of*  
32 *mental incompetence pursuant to this chapter arising out*  
33 *of a charge of a Section 290 offense.*

34 (5) (A) *If the defendant is committed or transferred*  
35 *to a state hospital pursuant to this section, the court may,*  
36 *upon receiving the written recommendation of the*  
37 *medical director of the state hospital and the regional*  
38 *center director that the defendant be transferred to a*  
39 *residential facility approved by the regional center*  
40 *director, order the defendant transferred to such facility.*

1 If the defendant is committed or transferred to a  
2 residential facility approved by the regional center  
3 director, the court may, upon receiving the written  
4 recommendation of the regional center director, transfer  
5 the defendant to a state hospital or to another residential  
6 facility approved by the regional center director.

7 In the event of dismissal of the criminal charges before  
8 the defendant recovers competence, the person shall be  
9 subject to the applicable provisions of the  
10 Lanterman-Petris-Short Act (Part 1 (commencing with  
11 Section 5000) of Division 5 of the Welfare and Institutions  
12 Code) or to commitment or detention pursuant to a  
13 petition filed pursuant to Section 6502 of the Welfare and  
14 Institutions Code.

15 The defendant or prosecuting attorney may contest  
16 either kind of order of transfer by filing a petition with the  
17 court for a hearing, which shall be held if the court  
18 determines that sufficient grounds exist. At such hearing  
19 the prosecuting attorney or the defendant may present  
20 evidence bearing on the order of transfer. The court shall  
21 use the same standards as used in conducting probation  
22 revocation hearings pursuant to Section 1203.2.

23 Prior to making an order for transfer under this section,  
24 the court shall notify the defendant, the attorney of  
25 record for the defendant, the prosecuting attorney, and  
26 the regional center director or designee.

27 *(B) If the defendant is committed to a state hospital or*  
28 *secure treatment facility pursuant to clause (ii) or (iii) of*  
29 *subparagraph (B) of paragraph (1) and is subsequently*  
30 *transferred to any other facility, copies of the documents*  
31 *specified in paragraph (3) shall be taken with the*  
32 *defendant to the new facility. The transferring facility*  
33 *shall also notify the appropriate law enforcement agency*  
34 *or agencies having local jurisdiction at the site of the new*  
35 *facility that the defendant is a person subject to clause (ii)*  
36 *or (iii) of subparagraph (B) of paragraph (1).*

37 (b) (1) Within 60 days of a commitment made  
38 pursuant to subdivision (a), the medical director of the  
39 state hospital or other facility to which the defendant is  
40 committed or the outpatient supervisor where the

1 defendant is placed on outpatient status shall make a  
2 written report to the committing court and the regional  
3 center director or a designee concerning the defendant's  
4 progress toward becoming mentally competent. If the  
5 defendant has not become mentally competent, but the  
6 report discloses a substantial likelihood the defendant will  
7 become mentally competent within the next 90 days, the  
8 court may order that the defendant shall remain in the  
9 state hospital or other facility or on outpatient status for  
10 that period of time. Within 150 days of a commitment  
11 made pursuant to subdivision (a) or if the defendant  
12 becomes mentally competent, the medical director of the  
13 hospital or person in charge of the facility or the  
14 outpatient supervisor shall report to the court and the  
15 regional center director or his or her designee regarding  
16 the defendant's progress toward becoming mentally  
17 competent. The court shall provide to the prosecutor and  
18 defense counsel copies of all reports under this section. If  
19 the report indicates that there is no substantial likelihood  
20 that the defendant has become mentally competent, the  
21 committing court shall order the defendant to be  
22 returned to the court for proceedings pursuant to  
23 paragraph (2) of subdivision (c). The court shall transmit  
24 a copy of its order to the regional center director or  
25 designee and to the Director of Developmental Services.

26 (2) Any defendant who has been committed or has  
27 been on outpatient status for six months, and is still  
28 hospitalized or on outpatient status shall be returned to  
29 the committing court where a hearing shall be held  
30 pursuant to the procedures set forth in Section 1369. The  
31 court shall transmit a copy of its order to the regional  
32 center director or designee and the Director of  
33 Developmental Services.

34 (3) If it is determined by the court that no treatment  
35 for the defendant's mental impairment is being  
36 conducted, the defendant shall be returned to the  
37 committing court. A copy of this order shall be sent to the  
38 regional center director or designee and to the Director  
39 of Developmental Services.





1 (c) (1) (A) Any defendant committed after the  
2 effective date of the chapter adding this subparagraph  
3 who has not become mentally competent shall be  
4 returned to the committing court at the end of six months  
5 from the date of commitment or a period of commitment  
6 equal to the maximum term of imprisonment provided  
7 by law for the most serious offense charged in the  
8 information, indictment, or misdemeanor complaint,  
9 whichever is shorter. Any defendant committed prior to  
10 the effective date of the chapter adding this  
11 subparagraph who has not become mentally competent  
12 shall be returned to the committing court at the end of six  
13 months from the effective date of the chapter adding this  
14 subparagraph; at the end of three years from the date of  
15 commitment; or a period of commitment equal to the  
16 maximum term of imprisonment provided by law for the  
17 most serious offense charged in the information,  
18 indictment, or misdemeanor complaint; whichever is  
19 shorter.

20 (B) The court shall notify the regional center director  
21 or designee and the Director of Developmental Services  
22 of that return and of any resulting court orders.

23 (2) In the event of dismissal of the criminal charges  
24 before the defendant becomes mentally competent, the  
25 defendant shall be subject to the applicable provisions of  
26 the Lanterman-Petris-Short Act (Part 1 (commencing  
27 with Section 5000) of Division 5 of the Welfare and  
28 Institutions Code), or to commitment and detention  
29 pursuant to a petition filed pursuant to Section 6502 of the  
30 Welfare and Institutions Code. If it is found that the  
31 person is not subject to commitment or detention  
32 pursuant to the applicable provision of the  
33 Lanterman-Petris-Short Act (Part 1 (commencing with  
34 Section 5000) of Division 5 of the Welfare and Institutions  
35 Code) or to commitment or detention pursuant to a  
36 petition filed pursuant to Section 6502 of the Welfare and  
37 Institutions Code, the individual shall not be subject to  
38 further confinement pursuant to this article and the  
39 criminal action remains subject to dismissal pursuant to  
40 Section 1385. The court shall notify the regional center

1 director and the Director of Developmental Services of  
2 any such dismissal.

3 (d) Notwithstanding any other provision of this  
4 section, the criminal action remains subject to dismissal  
5 pursuant to Section 1385. If at any time prior to the  
6 maximum period of time allowed for proceedings under  
7 this article, the regional center director concludes that  
8 the behavior of the defendant related to the defendant's  
9 criminal offense has been eliminated during time spent  
10 in court-ordered programs, the court may, upon  
11 recommendation of the regional center director, dismiss  
12 the criminal charges. The court shall transmit a copy of  
13 any order of dismissal to the regional center director and  
14 to the Director of Developmental Services.

15 *SEC. 3. Section 11105 of the Penal Code is amended*  
16 *to read:*

17 11105. (a) (1) The Department of Justice shall  
18 maintain state summary criminal history information.

19 (2) As used in this section:

20 (i) "State summary criminal history information"  
21 means the master record of information compiled by the  
22 Attorney General pertaining to the identification and  
23 criminal history of any person, such as name, date of birth,  
24 physical description, fingerprints, photographs, date of  
25 arrests, arresting agencies and booking numbers, charges,  
26 dispositions, and similar data about the person.

27 (ii) "State summary criminal history information"  
28 does not refer to records and data compiled by criminal  
29 justice agencies other than the Attorney General, nor  
30 does it refer to records of complaints to or investigations  
31 conducted by, or records of intelligence information or  
32 security procedures of, the office of the Attorney General  
33 and the Department of Justice.

34 (b) The Attorney General shall furnish state summary  
35 criminal history information to any of the following, if  
36 needed in the course of their duties, provided that when  
37 information is furnished to assist an agency, officer, or  
38 official of state or local government, a public utility, or any  
39 entity, in fulfilling employment, certification, or licensing

1 duties, Chapter 1321 of the Statutes of 1974 and of Section  
2 432.7 of the Labor Code shall apply:

3 (1) The courts of the state.

4 (2) Peace officers of the state as defined in Section  
5 830.1, subdivisions (a), (b), and (f) of Section 830.2,  
6 subdivision (a) of Section 830.3, subdivisions (a) and (b)  
7 of Section 830.5, and subdivision (a) of Section 830.31.

8 (3) District attorneys of the state.

9 (4) Prosecuting city attorneys of any city within the  
10 state.

11 (5) Probation officers of the state.

12 (6) Parole officers of the state.

13 (7) A public defender or attorney of record when  
14 representing a person in proceedings upon a petition for  
15 a certificate of rehabilitation and pardon pursuant to  
16 Section 4852.08.

17 (8) A public defender or attorney of record when  
18 representing a person in a criminal case and if authorized  
19 access by statutory or decisional law.

20 (9) Any agency, officer, or official of the state if the  
21 criminal history information is required to implement a  
22 statute or regulation that expressly refers to specific  
23 criminal conduct applicable to the subject person of the  
24 state summary criminal history information, and contains  
25 requirements or exclusions, or both, expressly based upon  
26 that specified criminal conduct.

27 (10) Any city or county, or city and county, or district,  
28 or any officer, or official thereof if access is needed in  
29 order to assist that agency, officer, or official in fulfilling  
30 employment, certification, or licensing duties, and if the  
31 access is specifically authorized by the city council, board  
32 of supervisors, or governing board of the city, county, or  
33 district if the criminal history information is required to  
34 implement a statute, ordinance, or regulation that  
35 expressly refers to specific criminal conduct applicable to  
36 the subject person of the state summary criminal history  
37 information, and contains requirements or exclusions, or  
38 both, expressly based upon that specified criminal  
39 conduct.

1 (11) The subject of the state summary criminal history  
2 information under procedures established under Article  
3 5 (commencing with Section 11120), Chapter 1, Title 1 of  
4 Part 4.

5 (12) Any person or entity when access is expressly  
6 authorized by statute if the criminal history information  
7 is required to implement a statute or regulation that  
8 expressly refers to specific criminal conduct applicable to  
9 the subject person of the state summary criminal history  
10 information, and contains requirements or exclusions, or  
11 both, expressly based upon that specified criminal  
12 conduct.

13 (13) Health officers of a city, county, or city and  
14 county, or district, when in the performance of their  
15 official duties enforcing Section 3110 of the Health and  
16 Safety Code.

17 (14) Any managing or supervising correctional officer  
18 of a county jail or other county correctional facility.

19 (15) Any humane society, or society for the prevention  
20 of cruelty to animals, for the specific purpose of  
21 complying with Section 607f of the Civil Code for the  
22 appointment of level 1 humane officers.

23 (c) The Attorney General may furnish state summary  
24 criminal history information upon a showing of a  
25 compelling need to any of the following, provided that  
26 when information is furnished to assist an agency, officer,  
27 or official of state or local government, a public utility, or  
28 any entity, in fulfilling employment, certification, or  
29 licensing duties, Chapter 1321 of the Statutes of 1974 and  
30 of Section 432.7 of the Labor Code shall apply:

31 (1) Any public utility as defined in Section 216 of the  
32 Public Utilities Code that operates a nuclear energy  
33 facility when access is needed in order to assist in  
34 employing persons to work at the facility, provided that,  
35 if the Attorney General supplies the data, he or she shall  
36 furnish a copy of the data to the person to whom the data  
37 relates.

38 (2) To a peace officer of the state other than those  
39 included in subdivision (b).

40 (3) To a peace officer of another country.

1 (4) To public officers (other than peace officers) of the  
2 United States, other states, or possessions or territories of  
3 the United States, provided that access to records similar  
4 to state summary criminal history information is expressly  
5 authorized by a statute of the United States, other states,  
6 or possessions or territories of the United States if the  
7 information is needed for the performance of their  
8 official duties.

9 (5) To any person when disclosure is requested by a  
10 probation, parole, or peace officer with the consent of the  
11 subject of the state summary criminal history information  
12 and for purposes of furthering the rehabilitation of the  
13 subject.

14 (6) The courts of the United States, other states or  
15 territories or possessions of the United States.

16 (7) Peace officers of the United States, other states, or  
17 territories or possessions of the United States.

18 (8) To any individual who is the subject of the record  
19 requested if needed in conjunction with an application to  
20 enter the United States or any foreign nation.

21 (9) Any public utility as defined in Section 216 of the  
22 Public Utilities Code, if access is needed in order to assist  
23 in employing current or prospective employees who in  
24 the course of their employment may be seeking entrance  
25 to private residences. The information provided shall be  
26 limited to the record of convictions and any arrest for  
27 which the person is released on bail or on his or her own  
28 recognizance pending trial.

29 If the Attorney General supplies the data pursuant to  
30 this paragraph, the Attorney General shall furnish a copy  
31 of the data to the current or prospective employee to  
32 whom the data relates.

33 Any information obtained from the state summary  
34 criminal history is confidential and the receiving public  
35 utility shall not disclose its contents, other than for the  
36 purpose for which it was acquired. The state summary  
37 criminal history information in the possession of the  
38 public utility and all copies made from it shall be  
39 destroyed not more than 30 days after employment or  
40 promotion or transfer is denied or granted, except for

1 those cases where a current or prospective employee is  
2 out on bail or on his or her own recognizance pending  
3 trial, in which case the state summary criminal history  
4 information and all copies shall be destroyed not more  
5 than 30 days after the case is resolved.

6 A violation of this paragraph is a misdemeanor, and  
7 shall give the current or prospective employee who is  
8 injured by the violation a cause of action against the  
9 public utility to recover damages proximately caused by  
10 the violations. Any public utility's request for state  
11 summary criminal history information for purposes of  
12 employing current or prospective employees who may be  
13 seeking entrance to private residences in the course of  
14 their employment shall be deemed a "compelling need"  
15 as required to be shown in this subdivision.

16 Nothing in this section shall be construed as imposing  
17 any duty upon public utilities to request state summary  
18 criminal history information on any current or  
19 prospective employees.

20 (10) To any campus of the California State University  
21 or the University of California, or any four-year college or  
22 university accredited by a regional accreditation  
23 organization approved by the United States Department  
24 of Education, if needed in conjunction with an  
25 application for admission by a convicted felon to any  
26 special education program for convicted felons,  
27 including, but not limited to, university alternatives and  
28 halfway houses. Only conviction information shall be  
29 furnished. The college or university may require the  
30 convicted felon to be fingerprinted, and any inquiry to  
31 the department under this section shall include the  
32 convicted felon's fingerprints and any other information  
33 specified by the department.

34 (d) Whenever an authorized request for state  
35 summary criminal history information pertains to a  
36 person whose fingerprints are on file with the  
37 Department of Justice and the department has no  
38 criminal history of that person, and the information is to  
39 be used for employment, licensing, or certification  
40 purposes, the fingerprint card accompanying the request

1 for information, if any, may be stamped “no criminal  
2 record” and returned to the person or entity making the  
3 request.

4 (e) Whenever state summary criminal history  
5 information is furnished as the result of an application and  
6 is to be used for employment, licensing, or certification  
7 purposes, the Department of Justice may charge the  
8 person or entity making the request a fee that it  
9 determines to be sufficient to reimburse the department  
10 for the cost of furnishing the information. In addition, the  
11 Department of Justice may add a surcharge to the fee to  
12 fund maintenance and improvements to the systems  
13 from which the information is obtained. Notwithstanding  
14 any other law, any person or entity required to pay a fee  
15 to the department for information received under this  
16 section may charge the applicant a fee sufficient to  
17 reimburse the person or entity for this expense. All  
18 moneys received by the department pursuant to this  
19 section, Sections 11105.3 and 12054 of the Penal Code, and  
20 Section 13588 of the Education Code shall be deposited in  
21 a special account in the General Fund to be available for  
22 expenditure by the department to offset costs incurred  
23 pursuant to those sections and for maintenance and  
24 improvements to the systems from which the information  
25 is obtained upon appropriation by the Legislature.

26 (f) Whenever there is a conflict, the processing of  
27 criminal fingerprints and fingerprints of applicants for  
28 security guard or alarm agent registrations or firearms  
29 qualification permits submitted pursuant to Section 7514  
30 of the Business and Professions Code shall take priority  
31 over the processing of applicant fingerprints.

32 (g) It is not a violation of this section to disseminate  
33 statistical or research information obtained from a record,  
34 provided that the identity of the subject of the record is  
35 not disclosed.

36 (h) It is not a violation of this section to include  
37 information obtained from a record in (1) a transcript or  
38 record of a judicial or administrative proceeding or (2)  
39 any other public record if the inclusion of the information

1 in the public record is authorized by a court, statute, or  
2 decisional law.

3 (i) Notwithstanding any other law, the Department of  
4 Justice or any state or local law enforcement agency may  
5 require the submission of fingerprints for the purpose of  
6 conducting summary criminal history information checks  
7 that are authorized by law.

8 (j) *The state summary criminal history information*  
9 *shall include any finding of mental incompetence*  
10 *pursuant to Chapter 6 (commencing with Section 1367)*  
11 *of Title 10 of Part 2 arising out of a complaint charging a*  
12 *felony offense specified in Section 290.*

13 SEC. 4. *Section 6509 of the Welfare and Institutions*  
14 *Code is amended to read:*

15 6509. If the court finds that the person is mentally  
16 retarded, and that he is a danger to himself or to others,  
17 the court may make an order that the person be  
18 committed to the State Department of Developmental  
19 Services for suitable treatment and habilitation services.  
20 Suitable treatment and habilitation services is defined as  
21 the least restrictive residential placement necessary to  
22 achieve the purposes of treatment. Care and treatment  
23 of a person committed to the State Department of  
24 Developmental Services may include placement in any  
25 state hospital, any licensed community care facility as  
26 defined in Section 1504, or any health facility as defined  
27 in Section 1250. The court shall hold a hearing as to the  
28 available placement alternatives and consider the report  
29 of the regional center director or designee submitted  
30 pursuant to Section 6504.5. After hearing all the evidence  
31 the court shall order that the person be committed to that  
32 placement which the court finds to be the most  
33 appropriate alternative. The court, however, may  
34 commit a mentally retarded person who is not a resident  
35 of this state under Section 4460 for the purpose of  
36 transportation of such person to the state of his legal  
37 residence pursuant to Section 4461. The State  
38 Department of Developmental Services shall receive the  
39 person committed to it and shall place the person in the  
40 placement ordered by the court.



1     *If the person has at any time been found mentally*  
2     *incompetent pursuant to Chapter 6 (commencing with*  
3     *Section 1367) of Title 10 of Part 2 of the Penal Code arising*  
4     *out of a complaint charging a felony offense specified in*  
5     *Section 290 of the Penal Code, the court shall order the*  
6     *State Department of Developmental Services to give*  
7     *notice of that finding to the designated placement facility*  
8     *and the appropriate law enforcement agency or agencies*  
9     *having local jurisdiction at the site of the placement*  
10    *facility.*

11    If the Department of Developmental Services decides  
12    that a change in placement is necessary, it shall notify in  
13    writing the court of commitment, the district attorney  
14    and the attorney of record for the person and the regional  
15    center of such decision at least 15 days in advance of the  
16    proposed change in placement. The court may hold a  
17    hearing and (1) approve or disapprove of the change, or  
18    (2) take no action in which case the change shall be  
19    deemed approved. At the request of the district attorney  
20    or of the attorney for the person, a hearing shall be held.

21    SEC. 5. Section 7325 of the Welfare and Institutions  
22    Code is amended to read:

23    7325. (a) When any patient committed by a court to  
24    a state hospital or other institution on or before June 30,  
25    1969, or when any patient who is judicially committed on  
26    or after July 1, 1969, or when any patient who is  
27    involuntarily detained pursuant to Part 1 (commencing  
28    with Section 5000) of Division 5 escapes from any state  
29    hospital, any hospital or facility operated by or under the  
30    Veterans' Administration of the United States  
31    government, or any facility designated by a county  
32    pursuant to Part 1 (commencing with Section 5000) of  
33    Division 5, or any facility into which the patient has been  
34    placed by his or her conservator appointed pursuant to  
35    Chapter 3 (commencing with Section 5350) of Part 1 of  
36    Division 5, or when a judicially committed patient's  
37    return from leave of absence has been authorized or  
38    ordered by the State Department of Mental Health, or  
39    the State Department of Developmental Services, or the  
40    facility of the Veterans' Administration, any peace officer,

1 upon written request of the state hospital, veterans'  
2 facility, or the facility designated by a county, or the  
3 patient's conservator appointed pursuant to Chapter 3  
4 (commencing with Section 5350) of Part 1 of Division 5,  
5 shall without the necessity of a warrant or court order, or  
6 any officer or employee of the State Department of  
7 Mental Health, or of the State Department of  
8 Developmental Services, designated to perform these  
9 duties may, apprehend, take into custody, and deliver  
10 him or her to the state hospital or to a facility of the  
11 Veterans' Administration, or the facility designated by a  
12 county, or to any person or place authorized by the State  
13 Department of Mental Health, or by the State  
14 Department of Developmental Services, or by the  
15 Veterans' Administration, or the local director of the  
16 county mental health program of the county in which is  
17 located the facility designated by the county, or the  
18 patient's conservator appointed pursuant to Chapter 3  
19 (commencing with Section 5350) Part 1 of Division 5 as  
20 the case may be, to receive him or her. Every officer or  
21 employee of the State Department of Mental Health, or  
22 of the State Department of Developmental Services,  
23 designated to apprehend or return ~~such~~ *those* patients  
24 shall have the powers and privileges of peace officers so  
25 far as necessary to enforce this section.

26 (b) As used in ~~his~~ *this* section, "any peace officer"  
27 means the persons specified in Section 830.1 of the Penal  
28 Code.

29 (c) Any officer or employee of a state hospital, hospital  
30 or facility operated by or under the Veterans'  
31 Administration, or any facility designated by a county  
32 pursuant to Part 1 (commencing with Section 5000) of  
33 Division 5 shall provide any peace officer with any  
34 information concerning any patient who escapes from  
35 the hospital or facility ~~in order that is necessary~~ to assist  
36 in the apprehension and return of the patient. The  
37 written notification of the escape required by this section  
38 shall include the name and physical description of the  
39 patient, his or her home address, the degree of  
40 dangerousness of the patient, including specific

1 information about the patient if he or she is deemed likely  
2 to cause harm to himself or herself or to others, and any  
3 additional information which is necessary to apprehend  
4 and return the patient. If the escapee has been charged  
5 with any crime involving physical harm to children, the  
6 notice shall be provided *by the law enforcement agency*  
7 to school districts in the vicinity of the hospital or other  
8 facility in which the escapee was being held, in the area  
9 the escapee is known or is likely to frequent, and in the  
10 area where the escapee resided immediately prior to  
11 confinement.

12 (d) The person in charge of the hospital or facility, or  
13 his or her designee, may provide telephonic notification  
14 of the escape to the law enforcement agency ~~and~~  
15 ~~educational agency~~ of the county or city in which the  
16 hospital or facility is located. If that notification is given,  
17 the time and date of notification, the person notified, and  
18 the person making the notification shall be noted in the  
19 written notification required by this section.

20 (e) *Photocopying shall not be required in order to*  
21 *satisfy the requirements of this section.*

22 (f) *No public or private entity or public or private*  
23 *employee shall be liable for damages caused, or alleged*  
24 *to be caused, by the release of information or the failure*  
25 *to release information pursuant to this section.*

26 SEC. 6. *Notwithstanding Section 17610 of the*  
27 *Government Code, if the Commission on State Mandates*  
28 *determines that this act contains costs mandated by the*  
29 *state, reimbursement to local agencies and school*  
30 *districts for those costs shall be made pursuant to Part 7*  
31 *(commencing with Section 17500) of Division 4 of Title*  
32 *2 of the Government Code. If the statewide cost of the*  
33 *claim for reimbursement does not exceed one million*  
34 *dollars (\$1,000,000), reimbursement shall be made from*  
35 *the State Mandates Claims Fund.*

36 *Notwithstanding Section 17580 of the Government*  
37 *Code, unless otherwise specified, the provisions of this act*

1 *shall become operative on the same date that the act*  
2 *takes effect pursuant to the California Constitution.*

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